

EXECUTION COPY

PHASE II DESIGN/BUILD AGREEMENT

By and Between

Camp Pendleton & Quantico Housing, LLC

and

Hunt Yuma DB, LLC, as Design/Builder

Dated as of October 1, 2004

TABLE OF CONTENTS

	<u>PAGE</u>
RECITALS	1
ARTICLE 1 DEFINITIONS.....	1
ARTICLE 2 SCOPE OF WORK.....	9
2.1 Performance of Work.....	9
2.2 Professional Standard.....	9
2.2.1 Standards of Performance	9
2.3 Use of Design Materials.....	9
2.3.1 Use of Design Materials.....	9
2.4 Local Conditions; Environmental Site Conditions	10
2.4.1 Local Conditions.....	10
2.4.2 Hazardous Materials	10
2.5 Order of Magnitude Documents and Construction Documents.....	11
2.5.1 General.....	11
2.5.2 Reliance on Approvals.....	11
2.5.3 Review of Contract Documents and Field Conditions	11
2.6 Legal Requirements	11
2.7 Services and Facilities.....	12
2.7.1 General	12
2.7.2 Supervision	12
2.7.3 Coordination	13
2.7.4 Cooperation.....	13
2.7.5 Management.....	13
2.7.6 Reports.....	13
2.8 Warranties.....	13
2.8.1 Construction Warranty.....	13
2.8.2 Rehabilitation Warranty.....	14
2.8.3 Landscaping Warranty.....	14
2.8.4 Application of Warranties.....	14
2.8.5 No Limitation.....	15
2.8.6 Third Party Items	15
2.8.7 Intentionally Omitted.	15
2.8.8 Failure to Correct Work	15
2.8.9 Acceptance of Work	16
2.8.10 Removal of Work.....	16
2.8.11 Damaged or Destroyed Work	16
2.9 Taxes.....	16
2.10 Access by Company or United States Member	16

2.11	Use of Site.....	16
2.12	Patents, Trademarks, Copyrights	17
2.13	Rubbish; Debris; Cleanup	17
2.14	Permits, Fees and Notices	17
2.15	Shop Drawings, Product Data and Samples	18
2.15.1	Documents and Samples at the Site	18
2.15.2	Shop Drawings, Product Data and Samples	18
2.15.3	Responsibility	18
2.16	Tests and Inspections	19
2.16.1	Initial Tests and Inspections.....	19
2.16.2	Additional Tests and Inspections	19
2.16.3	Required Certificates	19
2.16.4	Timing of Testing and Inspections	19
2.17	Execution, Correlation and Intent	19
2.17.1	Execution of Agreement	19
2.17.2	Intent of Contract Documents.....	19
2.17.3	Organization of Materials	20
2.17.4	Meaning of Words	20
2.18	Labor and Materials; Liens.	20
2.19	Cutting and Patching.....	20
2.19.1	Cutting and Patching of the Work	20
2.19.2	Damage to Work of the Company or Separate Contractors	20
2.20	Uncovering of Construction Work.....	21
2.20.1	Uncovering.....	21
2.20.2	Covering of Work Requested to be Observed	21
ARTICLE 3 COMPANY'S DUTIES AND RESPONSIBILITIES.....		21
3.1	Information and Services Required of the Company.....	21
3.1.1	Company Designation of Authorized Representative.....	21
3.1.2	Communication.....	21
3.1.3	Consent and Approval.....	21
3.1.4	Governmental Approvals	22
3.1.5	Financial Information.....	22
3.2	Activities on the Site by Company or Separate Contractors.....	22
3.2.1	Company's Right to Award Separate Contracts.....	22
3.2.2	Integration of the Work with Separate Contractors	22
3.2.3	Coordination	23
3.2.4	Use of Site.....	23
3.2.5	Deficiency in Work of Separate Contractors	23
3.2.6	Claims Involving Separate Contractors	23
3.2.7	Damage or Injury by Separate Contractors.....	24
3.3	Assignment of Separate Contracts	24
3.4	Company's Right to Stop the Work.....	24
3.5	Company's Right to Carry out the Work	24

ARTICLE 4 TIME.....	25
4.1 Progress and Completion	25
4.2 Schedule Obligations	25
4.2.1 Contract Schedule	25
4.2.2 Prosecution of the Work	25
4.3 Preconstruction Activities	25
4.4 Construction Activities	25
4.5 Intentionally Deleted	26
4.6 Delays	26
4.6.1 Excusable Delays	26
4.6.2 Schedule Amendment due to Excusable	26
4.6.3 Decision by Company	27
4.6.4 Liquidated Damages	27
4.7 Adjustment in GMP on Account of Extensions of Time	27
4.7.1 Payment for Excusable Delays	27
4.7.2 Concurrent Delays	27
4.8 No Damages on Account of Delay	28
ARTICLE 5 PAYMENT AND COMPLETION; SAVINGS	28
5.1 Guaranteed Maximum Price; Savings	28
5.1.1 General	28
5.1.2 Payment	28
5.1.3 Savings	28
5.1.4 Incentive Fee	28
5.2 Schedule of Values	29
5.3 Applications for Payment	30
5.4 Amount of Progress Payments	30
5.5 Retainage	30
5.6 Early Release of Subcontractor Retainage	31
5.7 Payment for On-Site and Off-Site Stored Materials	31
5.8 Title to Construction Work	31
5.9 Withholding of Payment	31
5.10 Failure of Payment; Interest	32
5.11 Substantial Completion	32
5.12 Partial Occupancy or Use	33
5.13 Final Completion and Final Payment	33
5.13.1 Final Completion of a Building	33
5.13.2 Conditions Precedent to Final Payment on Account of a Building	33
5.13.3 Delay in Final Completion	34
5.13.4 Waiver of Claims at Final Payment	34
5.14 Allowances	34
5.15 Superintendent	35
5.16 Documents and Samples at the Site	35
5.17 Contingency	35

ARTICLE 6 CHANGES IN THE WORK; CLAIMS	35
6.1 Changes.....	35
6.2 Change Directives.....	36
6.3 Change Proposals.....	36
6.4 Claims	37
6.5 Payment on account of Change Orders and/or Excusable Delays.....	37
6.5.1 Construction Work, Rehabilitation Work, Landscaping Work	37
6.5.2 Design Work	37
6.5.3 Decreased Scope	38
6.6 Changes on Account of Delay in Commencement of Work.....	38
6.7 Changes on Account of Escalation in Costs.	38
6.8 Time Extensions on Account of Change Orders.....	39
ARTICLE 7 TRANSFER OF CARE, CUSTODY AND CONTROL	39
7.1 Care, Custody and Control by Design/Builder During Construction	39
7.2 Substantial Completion; Partial Occupancy or Use.....	39
ARTICLE 8 TEAM SUBCONTRACTORS AND SUBCONTRACTORS	40
8.1 Team Subcontractors	40
8.2 Subcontracts.....	40
8.2.1 Incorporation of Contract Documents	40
8.2.2 Assignment of Subcontracts	40
8.3 Self-Performed Work.....	41
8.4 Subcontractor Bids.....	41
ARTICLE 9 INSURANCE AND BONDS; INDEMNIFICATION	41
9.1 Insurance to be Provided by the Design/Builder	41
9.2 Insurance to be Provided by the Company	41
9.3 Completion Guaranty or Payment and Performance Bonds.....	41
9.4 Indemnification.....	42
9.4.1 Indemnification by Design/Builder.....	42
9.4.2 Indemnification by Company	43
9.4.3 The Company's Property	43
9.5 Company Agreement	43
ARTICLE 10 PROTECTION OF PERSONS AND PROPERTY	43
10.1 Safety Precautions and Programs.....	43
10.1.1 Site Safety	43
10.1.2 Notices	44
10.2 Safety of Persons and Property	44
10.2.1 Reasonable Precautions	44
10.2.2 Safeguards.....	44
10.2.3 Use of Explosives	44

10.2.4	Remedy of Damage.....	44
10.2.5	Designation of Safety Coordinator	45
10.2.6	Loads.....	45
10.3	Security	45
10.4	Damage to Property at the Site	45
10.5	Damage to Property of Others	45
10.6	Failure of Design/Builder to Repair Damage	45
10.7	Emergencies.....	46
ARTICLE 11 DISPUTES		46
11.1	Disputes between Company and Design/Builder	46
11.2	Dispute Resolution Procedures	46
11.2.1	Initial Meeting to Resolve Disputes.....	46
11.2.2	Mediation	46
11.2.3	Arbitration.....	47
ARTICLE 12 EVENTS OF DEFAULT AND REMEDIES; TERMINATION		47
12.1	Design/Builder Events of Default.....	47
12.2	Remedies of the Company upon a Design/Builder Event of Default	48
12.2.1	Termination of Agreement.....	48
12.3	Company Events of Default.....	48
12.4	Remedies of the Design/Builder upon a Company Event of Default	49
12.5	Representations and Remedies	49
12.6	Termination or Suspension for Convenience.....	49
12.6.1	Termination for Convenience	49
12.6.2	Suspension for Convenience.....	50
ARTICLE 13 MISCELLANEOUS PROVISIONS.....		50
13.1	Governing Law	50
13.2	Successors and Assigns.....	50
13.3	Written Notice.....	50
13.4	Commencement of Statutory Limitation Period and Statute of Repose Period....	53
13.4.1	Before Substantial Completion	53
13.4.2	Between Substantial Completion and Final Completion	53
13.4.3	After Final Completion	53
13.4.4	Statute of Repose	53
13.5	Modifications	53
13.6	Interpretation.....	54
13.7	Severability	54
13.8	Whole Agreement	54
13.9	Accounting Records.....	54
13.10	Limitation of Liability.....	55
13.11	Audit and Records.....	55
13.11.1	General.....	55

13.11.2 Examination of Costs..... 55

13.11.3 Cost or Pricing Data..... 55

13.11.4 Access 55

13.11.5 No Required Creation of Records..... 56